

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

GINNY LYNN SMITH,

Plaintiff,

Case No.: 2:19-CV-_____

v.

MIFL RECYCLED CLOTHING INC.,

Defendant.

DAILEY LAW FIRM, P.C.

Brian T. Dailey (P39945)

Lauren M. Sitto (P82019)

Attorney for Plaintiff

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There is no other pending or resolved civil action arising out of the same transaction or occurrence as alleged in the Complaint.

COMPLAINT

NOW COMES Plaintiff, GINNY LYNN SMITH, by and through her attorneys, DAILEY LAW FIRM, P.C., and for her Complaint against the above-named Defendant states unto this Honorable Court as follows:

JURISDICTIONAL ALLEGATIONS

1. Pursuant to 28 USC § 1332, there is complete diversity in that Plaintiff and Defendant are residents of different States; Plaintiff being a resident of the Township of Commerce, County of Oakland, and State of Michigan, and Defendants registered address is in the City of Houston, County

of Harris, and State of Texas.

2. Pursuant to L.R. 81.1(a) and (b) and 28 USC § 1332(a), the amount in controversy exceeds the sum of Seventy-Five Thousand and 0/100 (\$75,000.00) Dollars, exclusive of costs, interest, and attorney fees, and venue is otherwise proper in this Court.

COUNT I – GENERAL ALLEGATIONS

3. Plaintiff repeats and incorporates by reference all previous paragraphs as though more fully set forth herein.

4. That on or about August 3, 2018, Richard Lee Berry, was the operator of a freightliner bearing license plate number BB58364 as it was travelling southbound on General Motors Road at or near its intersection with Milford Road when he sneezed and was unable to stop in time before crashing into and rear ending Plaintiff.

5. That at the same time, Plaintiff, GINNY LYNN SMITH, was travelling southbound on General Motors Road at or near its intersection with Milford Road whereupon her vehicle was stopped at a red light and struck from behind by Defendant's vehicle.

6. That on August 3, 2018, operator, Richard Lee Berry, owed a duty to the Plaintiff to operate the vehicle in a careful and reasonable manner under the Motor Vehicle Code of the State of Michigan, being MSA 9.2101, *et seq*, as well as the Common Law, but breached said duty in one or more of the following particulars so far as is presently known.

7. That among those Statutes violated include, but are not limited to the following:

MCL 257.626 Reckless driving;

MCL 257.626(B) Careless or negligent driving;

MCL 257.627 General restrictions as to speed and assured clear distance; and

MCL 257.628 Failure to observe a speed limit or traffic control device.

8. That Plaintiff sustained personal injuries as a direct and proximate result of the negligent acts or omissions as alleged herein.
9. That as a direct and proximate results of the negligence of Richard Lee Berry, the Plaintiff:
 - a. Sustained severe bodily injuries, which were painful, disabling and necessitated medical care;
 - b. Suffered shock and emotional damage;
 - c. Sustained possible aggravation of pre-existing conditions and / or reactivation of dormant conditions.
 - d. Was unable to attend her usual affairs;
 - e. Was hampered in her enjoyment of the normal pursuit of life as before;
 - f. Suffered injuries that are permanent to the degree that Plaintiff suffered losses in her ability to earn money as before and will have impaired earning capacity in the future and;
 - g. Will continue have pain and suffering as well as permanency, all as a result of the operators negligence as heretofore alleged.

10. As a direct and proximate result of the negligence of Richard Lee Berry, Plaintiff sustained injuries that constitute a serious impairment of bodily function as objectively impairment of an important body function that affects the Plaintiff's general ability to live his normal life including but not limited to injuries to: head, neck, shoulders, arms, hands, back, left hip, left leg and left toes, together with ongoing pain as well as an aggravation of pre-existing conditions and / or reactivation

of dormant conditions and other severe injuries.

11. The amount in controversy in this action is more than Seventy-Five Thousand and 0/100 (\$75,000.00) Dollars, exclusive of interest, costs or attorney fees.

WHEREFORE Plaintiff, GINNY LYNN SMITH, respectfully prays for damages in her favor and against Defendant in whatever amount the Plaintiff is found to be entitled, together with any costs, interest, or attorney fees so wrongfully sustained.

COUNT II – OWNER’S LIABILITY

12. Plaintiff repeats and incorporates by reference all previous paragraphs as though more fully set herein.

13. That on or about August 3, 2018, Defendant, MIFL RECYCLED CLOTHING INC., was the owner of a freightliner bearing license plate number BB58364 and with Defendant MIFL RECYCLED CLOTHING INC.’s express or implied consent, Richard Lee Berry operated said motor vehicle negligently thereby causing injuries to Plaintiff, said injuries constitute a serious impairment of a body function that affects her ability to live her normal life.

14. That pursuant to MCL 257.401, Defendant, MIFL RECYCLED CLOTHING INC., as owner of the aforementioned freightliner, is liable for the negligent operation of said vehicle by Richard Lee Berry, and, therefore, liable for the injuries and damages sustained by Plaintiff as more fully set forth herein in Count I.

COUNT III – VICARIOUS LIABILITY

15. Plaintiff repeats and incorporates by reference all previous paragraphs as though more fully set herein.

16. That Richard Lee Berry, acting as agent, on behalf of Defendant/Principal, MIFL

RECYCLED CLOTHING INC., binds Defendant to any and all of his actions while in the scope of his employment.

17. That Richard Lee Berry was acting in the scope of his employment on August 3, 2018 when he negligently operated Defendant MIFL RECYCLED CLOTHING INC.'s freightliner crashing into Plaintiff.

**COUNT IV – VIOLATIONS OF THE FEDERAL MOTOR CARRIER SAFETY
ADMINISTRATION REGULATIONS**

18. Plaintiff repeats and incorporates by reference all previous paragraphs as though more fully set herein.

19. That Defendant may have violated one or more of the Federal Motor Carrier Safety Administration Regulations resulting in the injuries and damages sustained by Plaintiff.

WHEREFORE Plaintiff, GINNY LYNN SMITH, respectfully prays for damages in her favor and against Defendant in whatever amount the Plaintiff is found to be entitled, together with any costs, interest, or attorney fees so wrongfully sustained.

Respectfully Submitted,
DAILEY LAW FIRM, PC

Dated: May 31, 2019

/s/ Brian T. Dailey
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